

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA                  )  
                                                  )  
                                                  )  
v.                                            )         Case No. 20-cr-10268-RGS  
                                                  )  
                                                  )  
DAVID DESOUSA,                            )  
                                                  )  
                                                  )  
Defendant.                                    )

**GOVERNMENT'S OPPOSITION TO DEFENDANT'S RENEWED MOTION  
FOR RELEASE**

The United States of America respectfully opposes the defendant's Renewed Motion for Release From Custody. Doc. 75. The defendant raises no new circumstances warranting his release. The government further relies upon prior filings in opposition to the defendant's motions for release and incorporates them by reference. *See* Docs. 31, 36. For the reasons discussed below and in the government's prior filings in opposition, this Court should DENY the defendant's renewed motion for release.

**BACKGROUND**

The defendant is indicted in six counts related to the distribution of and possession with intent to distribute methamphetamine. Doc. 40. Four of the six counts alleged in the indictment have a mandatory minimum penalty of 10 years up to life imprisonment.

Following a detention hearing on August 12, 2020, Magistrate Judge Boal ordered the defendant detained. Order of Detention, Doc. 21. On September 3, 2020, the defendant filed a Motion to Reconsider the Order of Detention. Doc. 25. On September 11, 2020, the government filed its opposition to the defendant's motion, which is incorporated herein by reference. Doc.

31. On September 21, 2020, Judge Boal denied the Motion to Reconsider the Order of Detention. Doc. 34.

On September 24, 2020, the defendant filed a Motion for District Court Review of the Order of Detention. Doc. 35. On October 8, 2020, the government filed its opposition to the defendant's motion, which is incorporated herein by reference. Doc. 36. On December 21, 2020, District Judge Talwani denied the defendant's motion to revoke the Order of Detention. Doc. 50. As stated in Judge Talwani's decision, the court first learned the defendant contracted COVID-19 during the hearing on the defendant's motion for district court review. Doc. 50 at 5-6. Luckily, the defendant did not suffer serious consequences from the infection.

### **ARGUMENT**

The defendant's renewed motion for release raises no new or changed circumstances that were not previously considered by Judge Boal or Judge Talwani. *See* 18 USC 3142(f) ("detention proceedings may be reopened based on "information [ ] that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community"); *see generally United States v. Jackson*, 2021 WL 231503, \*1 (D.N.H. Jan. 22, 2021) ("Importantly, the new information 'must be of a nature that would increase the likelihood that the defendant will appear at trial and would show that the defendant is less likely to pose a danger to the community'"') (quoting *United States v. Watson*, 475 F.App'x 598, 600 (6th Cir. 2012)).

The defendant further does not propose any conditions of release that were not previously considered by two judges in this court who have found that he is a danger to the community. The defendant was selling large quantities of methamphetamine from his home and a storage

unit. Upon his arrest, agents seized a loaded firearm from the defendant's residence and \$90,000 in cash from his storage unit, which supports the extensiveness of his drug dealing and the dangers of the drug trade.

There is one change in circumstance, though not in the defendant's favor. The defendant has now been vaccinated against the coronavirus and presumably has natural immunity from the virus from his prior infection.<sup>1</sup> According to the Centers for Disease Control and Prevention, the defendant, due to his vaccination, is protected against severe illness, including disease caused by the Delta and other variants of the coronavirus.<sup>2</sup> Therefore, the defendant has raised no new circumstances that warrant the reconsideration of the Order of Detention.

### **CONCLUSION**

For all of the reasons articulated herein and in its prior filings in opposition, the government respectfully requests that this Court DENY the defendant's Renewed Motion for Release.

Respectfully submitted,

NATHANIEL R. MENDELL  
Acting United States Attorney

By: /s/ Philip C. Cheng

Philip C. Cheng

James E. Arnold

Assistant United States Attorneys

Date: October 7, 2021

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<sup>1</sup> <https://www.cdc.gov/vaccines/covid-19/hcp/answering-questions.html> (last accessed October 6, 2021); and Def. Motion at 1.

<sup>2</sup> <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measure-effectiveness/breakthrough-cases.html> (updated September 7, 2021) (last accessed October 6, 2021)

**CERTIFICATE OF SERVICE**

I hereby certify that this document will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

*/s/ Philip C. Cheng*

Philip C. Cheng

Assistant U.S. Attorney

Dated: October 7, 2021